Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

Lazhar Abbes

Pro se Petitioner,

VS.

EMBRAER ENGINEERING SERVICES, INC.

D/b/a EMBRAER SERVICES INC.

Respondent.

On Petition For Writ Of Certiorari

To The United States Court Of Appeals

Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Lazhar Abbes

6737 Houlton Cir.

Lake Worth, FL. 33467

Tel: (561) 304-3006

QUESTION(s) PRESENTED

(i) Did the United States District Court, Southern District of Florida and the United States Court of Appeals, Eleventh Circuit Erroneously find that Embraer Engineering Services, Inc's ("EESI") allegations regarding Mr. Abbes's poor quality of work and performance are reasons for "EESI'S" managers Admission and believe in the validity of their criticisms of him constitute a non discriminatory action against him?

(ii) Did the United States District Court, Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit correctly find that transferring Mr. Abbes to an other Engineering discipline against his will, terminated his employment without valid reasons and replaced him with other employees does not constitute a discriminatory action against him? Plaintiff Lazhar Abbes was discriminated against and unlawfully terminated his employment by Defendant Embraer Engineering Services, Inc. ("EESI").

This is a case of "**origin discrimination**".

LIST OF PARTIES TO THE PROCEEDING

[X] All parties appear in the caption of the case on the cover page.

Lazhar Abbes

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pro se **Petitioner**,

VS.

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D/b/a Embraer Services, Inc.

Respondent.

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TABLE OF AUTHORITIES

Case Style: Lazhar Abbes v. Embraer Services, Inc.

District Court Number: 04-80652 CV-KLR

United States Court of Appeals, Eleventh Circuit, Atlanta, Georgia.

Appeal NO. 05-16439-DD

From Federal Court, The opinion of the United States Court of Appeals for Eleventh Circuit appears at Appendix B to the petition and is

[x] Unpublished.

RULES

See appendices **A** and **B**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For case from federal courts:

The opinion of the United States Court of Appeals appears at Appendix **-A-** to the petition and is

[x] Reported at The United States Court of Appeals for The Eleventh Circuit; or,

[ ] Has been designated for publication but not yet reported; or,

[x] Is unpublished.

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[x] For case from federal courts:

The opinion of the United States District Court Southern District of Florida Appendix **-B-** to the petition and is

[x] Reported at The United States District Court Southern District of Florida; or,

[ ] Has been designated for publication but not yet reported; or,

[x] Is unpublished.

JURISDICTION

[x] For case from federal courts:

The date on which the United States Court of Appeals Eleventh Circuit decided my case was September 12, 2006

[x] For case from federal courts:

The date on which the United States District Court Southern District of Florida, decided my case was October 18, 2005

(i) This Court has Jurisdiction because this is an Appeal from a final judgment of the United States Court of Appeals for the Eleventh Circuit, on September 12th, 2006.

(ii) This is an "**Employment Discrimination Case**".

The complaint was filed on July 13, 2004. And a notice of Appeal filed November 08, 2005. The disposition below is that United States District Court Southern District of Florida issued a final judgment on October 18, 2005 and The United States Court of Appeals Eleventh Circuit, Atlanta, Georgia issued a final judgment on September 12, 2006.

The Courts, having wrongfully granted Summary judgment in favor of Defendant Embraer Engineering Services, Inc., against Plaintiff Orders and Adjudges that Final Judgments are entered in favor of Defendant Embraer Services, Inc. and against Plaintiff. Prior to final Judgment.

The recommendation by Judge Ann E.Vitunac of the United States District Court, Southern District of Florida and the final judgment before Anderson, Dubina and Hull, Circuit judges of The United States Court of Appeals, Eleventh Circuit that the Defendant's Motion for Summary Judgment is granted.

The Defendant's Motion for Summary Judgment stating that Plaintiff fails to set forth a Prima facie case is false since Mr. Abbes proves the following:

Mr. Abbes is member of a protected group.
Defendant's management harassed Mr. Abbes.
Defendant terminated Mr. Abbes without a valid reason.
Defendant replaced Mr. Abbes upon termination with other employees.
Defendant made exceptions for employees of Brazilian origin.

Mr. Abbes does not know what reasons and facts led to Mr. Correa and Mr. Hyama's demotions ("EESI") demoted them but did not fire them some times before closing the company. These are two Brazilians origin and this is clearly ("EESI") treated Brazilians more favorably than other employees. Mr. Abbes was terminated prior to Defendant's action this is absolutely true and any ex-employee will testify this action. "EESI" closed its doors in May 2005 for bad conduct and discrimination against all non-Brazilian employees especially of Arabs origin; many non-Brazilian left the company when opportunities with the Boeing company were available.

Mr. Baklund and Mr. Bouter's written declarations prove there was discrimination against employees of Arabs origin. Plaintiff Mr. Abbes is Tunisian, Arabic origin, was treated poorly in the terms and conditions of his Employment due to his national origin.

Mr. Abbes was assigned a deficient Catia workstation in a very harsh and hostile environment with severe air conditioning. Defendant failed to correct or respond to Mr. Abbes's requests and assigned that workstation only to Mr. Abbes since no body else accepted to work in a hostile environment, I have Mr. Stan contract engineer to witness and could be called if needed. Defendant engaged in discriminatory practice(s) with malice or reckless indifference and/or with wantonness, actual malice, deliberation, gross negligence, or utter disregard of law.

Defendant's managers harassed Mr. Abbes by adding more work loads every single day and asking for completion before even starting the job insulted with bad behavior and interpersonal relations. Mr. Hyama

Engineering Manager unfairly rated Mr. Abbes's Performance review. See appendix – **C-**, Knowledge competency page 50.

Defendant breached Mr. Abbes's employment contract agreement by failing to obtain a green card for him and his wife during his employment. See paragraph 1, page 7 of Appendix – **C -.**

Mr. Abbes did not fail to present proof of discriminatory actions against him as described in Plaintiff's Response to Summary Judgment. Defendant could not provide a valid reason for terminating Plaintiff's employment. Defendant's argument that the Plaintiff failed to exercise reasonable diligence in seeking future employment is wrong. There were no possibility for employment in the Plaintiff's field of Aerospace engineering and design for a long time.

Mr. Abbes conducted many researches to find employment. Note that Mr. Abbes is a Canadian citizen and cannot work without a TN visa (Trade Nafta). This requirement makes it more difficult for Mr. Abbes to obtain employment in the United States.

Following is a correction to Page 5 of Report and Recommendation stating that: ("...Instead, Plaintiff relies upon a series of conclusory allegations about his treatment while employed. For instance, Plaintiff makes a vague statement that he was transferred to the structures group against his will....").

The answer to this statement is: Mr. Abbes was transferred to the Interior group, which is another specialty of aerospace engineering and Mr. Abbes had no interest nor experience to work in this field especially there was a new project in his field just started prior to his transfer. He was forced to transfer against his will.

Mr. Abbes did not obtain his green card. This statement is accurate and not a conclusory allegation as stated in Defendant's argument. Defendant's allegations of Plaintiff's poor performance, arguing with his supervisors and refusing to conform his drawings to certain specifications are unfounded and false. Plaintiff's performance was

excellent but was not recognized by his supervisors, all designs and drawings made by Mr. Abbes were to the Defendant's standards. No engineering work can be released without being checked for compliance therefore defendant's arguing that design work was not performed to the ("EESI's") standards is false.

In the final judgment by the United States Court of Appeals, Circuit Eleven citing on paragraph 3, page 18 in Appendix - A -, "that Abbes does not adduce any facts to prove that this reason was a pretext for ("EESI's") discrimination against him, and he admitted that his supervisor believed in the validity of their criticisms of him" (this expression was taken exactly as is from Defendant's brief). This statement is false Mr. Abbes never admitted any criticism by any supervisor this was only insults and harassment by defendant's mangers.

Conclusion: I, Plaintiff, respectfully plead that The Supreme Court review all aspects of this cause and brings the trial case to justice.

STATEMENT OF THE ISSUES.

Plaintiff was employed by defendant as a Product Design Engineer structures, from May 2001 to November 2002. Plaintiff performed employment duties in a competent and professional manner at all times during Plaintiff's employment with Defendant. Prior to Plaintiff's termination he was treated poorly in the terms and conditions of his employment due to his national origin.

Defendant's management/ownership is predominantly Brazilian. Prior to Plaintiff's termination he was treated worse in the terms and conditions of his employment than employees who were Brazilian origin. Plaintiff has been discriminated against in the terms and conditions of Employment on the basis of national origin discrimination

in violation of Title VII of Civil Rights Act of 1964, 42 U.S.C. &&2000e-2000e-17, as amended. Plaintiff has been discriminated against by being unlawfully terminated on the basis of national origin discrimination in violation of Title VII of the Civil Right Act of 1964, 42 U.S.C. &&2000e-2000e-17, as amended.

Relief sought: Awarding Plaintiff Lazhar Abbes his lost back pay and benefits. Awarding Plaintiff Lazhar Abbes prejudgment interest. Awarding Plaintiff Lazhar his cost incurred in bringing this action, including damages for emotional distress and mental anguish, in an amount of to be determined at trial.

STATEMENT OF THE CASE.

This is an action for declaratory, injunctive, and monetary relief brought by Plaintiff, Lazhar Abbes, against Defendant's former employer, Embraer Engineering Services, Inc.

Plaintiff was subjected to unlawful employment discrimination on the basis of his National origin.

a) Nature of the case:

On November 15, 2002 Defendant Embraer Engineering Services, Inc. terminated Mr. Abbes's employment. Plaintiff has lost wages and benefits as a result of Defendant's Discriminatory actions. Plaintiff has suffered significant mental anguish and emotional distress as a result of Defendant's discriminatory actions. Mr. Abbes lost additional expenses in relocation, including home residence in Toronto was sold under market price for quick moving and lost in Canadian dollar exchange in 2001, where the Canadian dollar was very low.

b) The course of proceeding:

The United States District Southern District Court of Florida and the United States Court of Appeals Eleventh Circuit Erred by granting summary judgment to Defendant Embraer Engineering Services, Inc.

c) Statement of Facts:

Plaintiff has sufficient proof of discrimination against him by Defendant's Management. For farther explanation see Appendix **-C-.**

SUMMARY OF THE ARGUMENT.

The Statement of Facts and the exhibits referred to the response of defendant's motion for Summary judgment is in dispute. The defendant's Summary judgment remarks of repeated disagreements with Mr. Abbes's managers over the aircraft design drawings. Defendant managers' proposal to change Mr. Abbes's design was inappropriate for the fitting of the parts, See Deposition 15.

The defendants disagreed on some parts: Rib #1 and Fittings, which Mr. Abbes redesigned for safety and stress related purposes that the managers failed to investigate. Defendant's criticism of bad performance was unjustified since plaintiff has completed successfully many design work for ("EESI") and supported the engineering group for the tank's project. See design list, Appendix - **C** -.

Plaintiff had a very poor performance's review and was reviewed under module 2 level, while he was hired under module 4 level. See knowledge competencies and skills evaluation, Appendix **–C-**, and deposition12.

The assignment probation was violated. ("EESI") did not let Mr. Abbes complete the permitted time for the probation. See probation violation, Appendix – **C** -. ("EESI") was wrong to terminate Mr. Abbes employment and violated his employment contract agreement by not fulfilling the promise to acquire a green card for Mr. Abbes's spouse and himself. This was the main reason that Mr. Abbes accepted relocation from Canada and employment with ("EESI"). See Appendix – **C** -, (Employment offer), all other defendant's Employees had their green cards. The reason given for Mr. Abbes's termination was false and used as a pretext to discriminate against him. Therefore, He was discriminated against in the terms and conditions of employment on the basis of national origin discrimination violation of Title VII of the Civil Rights Act. Of 1964, 42 U.S.C. && 2000e-2000e-17, as amended.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RESPONSE TO SUMMARY JUDGMENT

Plaintiff, hereby respectfully submits this memorandum in support for his summary of judgment, pursuant to Fed. Rule Civ. Proc. 56. Defendant ("EESI") terminated Mr. Abbes because of his national origin, according to the sworn witnesses testimony set forth in the accompanying Statement of Material Facts in Dispute.

Mr. Abbes firmly states that ("EESI") manager's criticism of bad performance is not true See Deposition 5, P6-8 and more design work were completed. The answer to Defendant's arguing for the design ideas, Mr. Abbes did not mention any differences to the methodologies used by ("EESI").

There was no refusal to conform to ("EESI'S") methodology and all designs were done to Defendant's requirements and standards. Mr. Abbes has respected the Defendant's standards. All work was done in

compliance to ("EESI'S") STD. Mr. Abbes never rejected management's directions since they never gave any directions.

Plaintiff Mr. Abbes was transferred to the Interior group even though he had no interest in doing interior design and there was a project for the structures to design a new Pylon. He was forced to be transferred against his will. For all the above, Plaintiff Mr. Abbes should be entitled to summary judgment in his favor against ("EESI").

ARGUMENT RESPONSE

All interrogatories and admissions are on file and there are sufficient elements essential to trial. ("EESI"), replaced plaintiff by other personnel in his position of the structures. In the meantime, Mr. Abbes and other design engineers were transferred to the Interior's group, some of them were incompetent and had less experience. These employees were not terminated. The latest included many Brazilians who did not speak English and remained employed at ("EESI"). This was clearly a preferred group of Brazilians who were treated favorably by defendant ("EESI") even though they did not have the required level of experience and qualifications. Some of them were even promoted to higher positions including Mr. Lacerda, Mr. Tinoko, and Mr. Beck, who were hired after Mr. Abbes and possessed no more experience.

The fact is that all managers at (''EESI") were Brazilians and all non-Brazilian personnel were never promoted even though they had more qualifications and engineering experience. For example, Mr. Abbes demonstrated his ability to manage and support the structures group while doing design work with the successful completion of the Tank project. Plaintiff' wrote his comments in the performance review saying that the managers need to improve their communication skills, consistency, share information with all employees and listen to proposed approaches by others. See Appendix – **C** -, Knowledge

Competencies... Comments. The fact that "EESI'S" managers did not listen to everybody as stated by defendant's Motion for Summary Judgment pages 4 and 5 and for this reason there was a lack of communication. In defendant's pretext stating that Mr. Abbes's own admission, his managers believed in the validity of their criticism of him was only harassment, without merit. The fact is that these managers do not acknowledge how much work Mr. Abbes has completed successfully for ("EESI").

Mr. Abbes was doing everything from structures to composites to interiors Designs, there are no many design engineers who can demonstrate such expertise, as it requires qualifications and Years of experience. The managers' criticism was done on purpose to harass Mr. Abbes as they probably wished that he would engage in a dispute as mentioned by Defendant, their criticism was never admitted by Mr. Abbes as mentioned by the Court of Appeals in final judgment.

Mr. Abbes was placed in a very harsh working environment with severe air conditioning, where nobody else wanted to work, Mr. Stan an engineer contractor could witness the truth. Mr. Abbes addressed the air conditioning problem with the managers who failed to fix the issue and the HR. person was not available, (in maternity leave). Mr. Abbes felt that he had no choice and brought a heater to his working place (in Florida?). Also, plaintiff was left without an assigned Catia workstation. He had to look for an available Catia station daily to do his work and there was loss of time in computer configuration and difficulties accessing other applications.

Defendant blocked Mr. Abbes's access to important computer programs, including Embraer STD. and DWG. References these resources are needed to complete his work.

Defendant's comment in defendant's motion for summary judgment stated that Mr. Abbes clearly did not made reasonable efforts to obtain substantially comparable employment. There were no employment

opportunities available in Mr. Abbes's field during that time, after many searches including companies, Internet websites and employment agencies; Mr. Abbes decided to do his own business hoping to get an income to support his spouse and himself.

Mr. Abbes is a Tunisian origin, Canadian citizen and requires a TN (Trade Nafta) visa to work in the United States.

Conclusion: For all the reasons stated above, Plaintiff Mr. Abbes respectfully requests that this Court grants Summary Judgment in his favor and requests the defendant to pay compensation for damages and expenses. **Please read Note below.**

NOTE:

Embraer Engineering Services, Inc. **(management/Ownership is predominately Brazilian)**, and subsidiary of **Embraer Brazil**. Started business to support Aerospace engineering design services to Embraer Brazil. Embraer Engineering Services, Inc. was established in the United States in mid 2001 and closed on May 2005, their office was at 4600 E.Park Drive, Palm Beach Gardens, Florida.

Plaintiff Mr. Abbes was asked by Embraer's Brazil Specialist to divulgate everything he knows about Engineering design and technical Information related to his previous experience with Bombardier aerospace and other Aerospace Companies. Mr. Abbes refused to give any information. And replied to the specialist that this is confidential and can not be divulgated to any employer.

Since that day, Mr. Abbes believes that the purposes of Embraer Engineering Services, Inc. was to collect technical and engineering information from the United States and Canada. After fulfilling the need Embraer Engineering Services, Inc. closed its doors on May 2005 and returned to Brazil. Embraer Engineering Services, Inc discriminated against all Arab origins and all non-Brazilian origin including American

Nationals, See declarations in Appendix – **C** -. Plaintiff claim compensation at the amount of $550,00.00 to cover damages including lost of income, damages for emotional distress injuries and mental anguish. Other compensation relief as the court deems just and proper.

CONCLUSION

Based on the disputed factual record "EESI" lied to the District Court and the Court of Appeals in the contents of their brief to cover-up "EESI'S" management misconducts and discriminatory actions against Mr. Abbes and all non Brazilian origin employees. For the forgoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Lazhar Abbes

Date: January 10,2007

App. –A-

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

No. 05-16439

Non- Argument Calendar

D. C. Docket No. 04-80652-CV -KLR

LAZHAR ABBES,

Plaintiff-Appellant,

versus

EMBRAER SERVICES, INC. ,

d.b.a. Embraer Services Inc. ,

Defendant-Appellee.

Appeal from the United States District Court

for the Southern District of Florida

(September 12, 2006)

Before ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

App. –A-

Lazhar Abbes, a Canadian and Tunisian citizen, proceeding Pro se, appeals the district court's grant of summary judgment to Embraer

Engineering Services, Inc., ("EESI"), in his suit alleging national origin discrimination under Title VII! On appeal, Abbes argues that the district court erred in granting summary judgment for EESI because EESI treated other Brazilian employees more favorably and its given reasons for his termination were a pretext.

We review a district court's grant of summary judgment de novo, applying the same standards utilized by the district court. S.E.C. v. Adler, 1 7 F .3d 1325,1332 (11 th Cir. 1998). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions 0n file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed.R.Civ.P.56(c). If the non-moving party bears the ultimate burden of proof regarding the claim at issue in the motion, that party, in response to the motion, must go beyond the pleadings and establish, through competent evidence, that there truly is a genuine, material issue to be tried. Celotex Corp .v. Catrett, 477

U.S. 317, 324,106 S.Ct. 2548, 2553,91 L.Ed.2d 265 (1986). Additionally, the non-moving party must present enough evidence to demonstrate that it can meet the substantive evidentiary standards that apply to the case, that is, that a jury could. Abbes mistakenly named Embraer Services, Inc., as the defendant. The final judgment notes that the defendant's correct name is Embraer Engineering Services, Inc.

Note: Was Embraer Engineering, Inc then renamed to Embraer Engineering Services, Inc.

App. –A-

The district court 's grant of summary judgment to Embraer Engineering Services, Inc., ("EESI"), in his suit alleging national origin discrimination under Title VII.!

On appeal, Abbes argues that the district court erred in granting summary judgment for EESI because EESI treated other Brazilian employees more favorably and its given reasons for his termination were a pretext.

We review a district court's grant of summary judgment de novo, applying the same standards utilized by the district court. S.E.C. v. Adler, 137 F.3d 1325,1332 (11 th Cir. 1998). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed.R.Civ.P.56(c). If the non-moving party bears the ultimate burden of proof regarding the claim at issue in the motion, that party, in response to the motion, must go beyond the pleadings and establish, through competent evidence, that there truly is a genuine, material issue to be tried. Celotex Com. v. Catrett, 477

U.S. 317, 324,S.Ct. 2548, 2553, 91 LEd.2d 265 (1986). Additionally, the non-moving party must present enough evidence to demonstrate that it can meet the substantive evidentiary standards that apply to the case, that is, that a jury could . Abbes mistakenly named Embraer Services, Inc., as the defendant. The final judgment notes that the defendant's correct name is Embraer Engineering Services, Inc. (See note above).

reasonably return a verdict in his favor. See Anderson v. Liberty Lobby 477 U.S.242, 255, 106 S.Ct. 2505,2514,91 L.Ed.2d 202 (1986). We view t e evidence and all factual inferences there from in the light most favorable to the party opposing the motion, and all reasonable doubts about the facts are r solved in

favor of the nonmoving. Burton v. City of Belle Glade, 178 F.3d 1 75, 1187 (11th Cir. 1999). "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1 77 (11th Cir.1990). A. National Origin Discrimination Title VII makes it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. See Bass v. Board of County Com'rs. Orange County. Fla., 56 F.3d 1095,1103 (11th Cir. 2001); See also 42 U.S.C. § 2000e-2(a).

"In order to prove discriminatory treatment in violation of Title VII, a plaintiff must first establish a prima facie case of discrimination." Coutu v. Martin County Bd. of County Comm'rs, 47 F.3d 1068,1073 (11th Cir. 1995). We have stressed that courts should avoid a strict formulation of the element of a prima facie case. See Carter v. City of Miami, 870 F.2d 578, 583 (11th Cr. 1989).

Absent direct evidence of discrimination, a plaintiff in a termination can establish a prima facie case by showing that:

(1) he is a member of protected class; (2) he was subject to an adverse employment action; (3) he was qualified for the position held; (4) and he was replaced or treated less favorably than someone similarly situated outside of his protected class. Knight c. Baptist Hosp. of Miami, Inc., 330F.3d 1313,1316 (1Ith Cir. 2003). "To show that employees are similarly situated, the plaintiff must show that the employees are similarly situated in all relevant respects. ..it is necessary to consider whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways." Knight, 330 F.3d at 1316. An employee who committed multiple infractions is

not similarly situated to an employee who committed one infraction. Silvera v. Orange County, School Bd.,244 F .3d 1253, 1259 (11 th Cir.2001).

" A prima facie case of discrimination raises the inference that discriminatory intent motivated the adverse employment action." Coutu, 47 F .3d at 1073. "The employer may rebut this inference by 'clearly articulating in a reasonably specific manner a legitimate non-discriminatory reason' or the adverse action." ld. Quoting Conner v. Fort Gordon Bus Co., 761 F.2d 1495 1499 (11th Cir. 1985). "The heart of the pretext inquiry is not whether the employee agrees with the reasons that the employer gives for the discharge, but whet employer really was motivated by those reasons." Standard v. A.B.E.L, Servs., Inc., 161 F.3d 1318,1333 (1IthCir.1998).

"Once the employer satisfies this burden of production, the plaintiff then has the burden of persuading the court that the proffered reason is a pretext for the true discriminatory reason. "Coutu, 47 F .3d at 1073. "If the plaintiff does not proffer sufficient evidence to create a genuine issue of material fact regarding whether each of the defendant employer's articulated reasons is pretextual, the employer is entitled to summary judgment on the plaintiffs claim." Chapman v. AI Transp., 229 F.3d 1012, 1024 1025 (11th

Cir. 2000) (en banc). Upon review of the record and upon consideration of the parties' briefs, we find no reversible error.

The district court did not err in granting summary judgment for EESI because Abbes did not present a prima facie case of national origin discrimination. EESI concedes that Abbes, a Tunisian, is a member of a protected class and that he was terminated. Further, Abbes was qualified for an engineering position with EESI. However, Abbes cannot demonstrate that he was replaced upon termination or that EESI treated him less favorably than someone outside of his protected class.

Abbes does not allege that EESI replaced him upon termination. Abbes does argue that EESI treated a group of Brazilians more favorably and rewarded them with promotions, despite little experience. This evidence does not show, however, that EESI disciplined employees outside of Abbes's protected class, wit similar performance or behavioral issues, differently than it disciplined Abbes.

Abbes also claims that EESI transferred other engineers to the interiors group, but did not fire them despite their incompetence. However, he does not present any evidence of these engineers' incompetence, nor is there evidence that EESI demoted, but did not fire, Brazilians. Because Abbes present no evidence that EESI treated similarly situated engineers outside of his protected class more favorably than him, Abbes cannot prove a prima facie case of national origin discrimination.

Assuming that Abbes could establish a prima facie case of national origin discrimination, EESI is still entitled to summary judgment because Abbes cannot rebut EESI' s legitimate, non-discriminatory purpose for terminating him. EESI asserts that it terminated Abbes because of his constant disagreements with his supervisors. Abbes does not adduce any facts to prove that this reason was a pretext for EESI' s discrimination against him, and he admitted that his supervisors believed in the validity of their criticisms of him. Despite Abbes's assertions that his "performance was perfect," he presented no evidence to create a material dispute of fact that EESI' s reasons for terminating him were pretextual.

Accordingly, the district court did not err in granting EESI's motion for summary judgment as to Abbes's claims of national origin discrimination.

B. National Origin Harassment Abbes also argues on appeal that EESI harassed him by creating a "harsh work environment", transferring him to the interiors group, restricting his access to important computer

programs, pressuring him to complete work, an maintaining a cold work area. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating "against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual s race, color, religion, sex, or national origin." 42 V.S.C. § 2000e-2(a)(I). A hostile work environment claim under Title VII is established upon proof that "the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Miller v. Kenworth of Do than Inc, 277 F.3d 1269, 1275 (11th Cir. 2002). The employee has the burden of proving a hostile work environment. Edwards v. Wallace Community College, 49 F. d 1517, 1521(11th Cir. 1995). To establish a hostile work environment, a plaintiff must demonstrate five things, that:

(1) he belongs to a protected group; (2) he has been subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and thus create a discriminatory abusive work environment; and (5) the employer is responsible for that environment under a theory of either direct or vicarious liability. Miller, 277 F.3d at 1275.

Establishing that the harassing conduct was sufficiently severe or pervasive to alter the terms and conditions of employment has subjective and objective components. Mendoza v. Borden. Inc., 195 F.3d 1238,1246 (11th r. 1999) en banc). The employee must personally perceive the harassment as severe or pervasive. Id, Additionally, the environment must be one that a reasonable person in the employee's position would find hostile or abusive. Id.

App. –A-

Four factors are important in analyzing whether harassment 0bjectively altered an employee's terms or conditions of employment: (1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct was physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interfered with the employee's job performance. Id.

We must consider the alleged conduct in context and cumulatively, looking at the totality of the circumstances. Id. at 1242. However, mere utterance of an epithet which engenders offensive feelings in a employee does not sufficiently affect the conditions of employment to implicate Title VII. Harris v. Forklift Systems, Inc., 510 U.S. 17,21,114 S.Ct. 367, 371, 126 L.Ed.2d 195 (1993). After reviewing the record and the parties' briefs, we find no reversible error. The district court did not err in granting EESI's motion for summary judgment because Abbes cannot prove that any alleged harassment as so severe that it altered the terms and conditions of his employment. Even if the acts Abbes complains of qualified as unwelcome harassment, Abbes presents no evidence that EESI's management took these actions because of his Tunisian background. Abbes also presented an affidavit, which detailed discriminatory statements made by one employee towards another of Lebanese origin. However, there is no evidence that Abbes was privy to this statement so he could not subjectively perceive these statements as hostile. Further, such isolated epithets do not sufficiently affect the conditions of employment to implicate Title. Finally, Abbes cannot prove that the alleged incidents altered the terms and conditions of his employment. Therefore, Abbes cannot prove that EESI and its employee's conduct unreasonably interfered with his job performance. As a mere scintilla of evidence is not enough to defeat summary judgment, Abbes cannot show a material dispute of fact in order to defeat summary judgment.Accordingly, we affirm the district court's grant of summary judgment in favor of EESI. AFFIRMED.

App. –B-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80652-CN -RYSKAMPNITUNAC

FILED by \S\, D.C.

Oct 18 2005

CLARENCE MADDOK CLERK U.S. Dist. CT. Of

S.D. Of FLA, W.P.B.

LAZHAR ABBES,

Plaintif,

V.

EMBRAER SERVICES, INC.

d/b/a EMBRAER SERVICE, INC.,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court pursuant to the October 4, 2005 [DE 29] Report and Recommendation of Chief United States Magistrate Judge Ann E. Vitunac) recommending that Defendant' motion for summary judgment) filed July 29, 2005 (DE 21], be granted. Plaintiff filed 0 1ections to the Report and Recommendation on October 13, 2005 IDE 30). The Court, having viewed the Report and Recommendation, the objections filed thereto, and other pertinent portion s of the record, hereby

App. –B-

ORDERS AND ADJUDGES that the Report and Recommendation is RATIFIED,

AFFIRMED an APPROVED. Defendant's Motion for Summary Judgment, filed July 29,2005

(DE 21], is GRANTED. Final judgment shall issue by separate order.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 18th day of

October 2005.

\S\, KENNETH L. RYSKAMP

UNITED STATES DISTRICT JUDGE

Copies provided:

Honorable Ann.Vitunac

Lazhar Abbes, pose

Counsel of Record

App. –B-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No. 04-80652-CIV-RYSKAMP/VITUNAC

FILED by \S\, D.C.

Oct 18 2005

CLARENCE MADDOK CLERK U.S. Dist. CT. Of

S.D. Of FLA, W.P.B.

CASE CLOSED

LAZHAR ABBES,

Plaintif

V.

EMBRAER SERVICES, INC.

d/b/a EMBRAER SERVICE, INC.,

Defend

FINAL JUDGMENT

THE COURT, having granted summary judgment in favor of Defendant Embraer

Engineering Services, Inc., erroneously named in the Complaint as Embraer Services, Inc., and against Plaintiff Lazhar Abbes, hereby

App. –B-

ORDEAND ADJUDGES that FINAL JUDGMENT IS ENTERED in favor of

Defendant Embraer Engineering Services, Inc. and against Plaintiff Lazhar Abbes. The Clerk of Court shall CLOSE this case and DENY any pending motions as MOOT.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 18th day of

October, 2005.

\S\, KENNETH L. RYSKAMP

UNITED STATES DISTRICT JUDGE

Copies provided:

Honorable Ann. Vitunac

Lazar Abbes, pro se

Counsel of Record